Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 06/21/01?
   b. The request was received on 06/19/02.

II. EXHIBITS

1. Requestor, Exhibit I:
   a. Initial TWCC 60 and letter requesting dispute resolution
      1. EOBs
      2. UB-92
   b. Additional documentation date stamped 08/02/02
      1. Position Statement
      2. Medical Records
      3. EOBs from other carriers
   c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit II
   a. Position statement dated 08/07/02
   b. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 08/06/02. Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 08/06/02. The response from the insurance carrier was received in the Division on 08/07/02. Based on 133.307 (i) the insurance carrier's response is timely.

4. Notice of Additional Information submitted by Requestor is reflected in Exhibit III.

III. PARTIES' POSITIONS

1. Requestor: Letter, undated
   "**Under TWCC 133.1 (a) (8), the specific provider's usual and customary reimbursements must be considered:**…**Under Existing Texas Law the Carrier's Claim of an Established Methodology Cannot be Sustained:…The only way 413.011 applies is in its mandate that payment amounts not covered by an established fee guideline are subject to the criteria identified in section 413.011 (b) of the Texas Labor Code:…**This is not a Cost Based Model of reimbursement:…The Fact that other carriers pay the amount billed by the Requestor does provide evidence of fair and reasonable:…Any Methodology that uses The HCFA Ambulatory surgery Center 1994

Medicare Rate Survey, and/or the HCFA Medicare Program: Update of Ambulatory Surgical Center Payment Rates Effective for Services on or After October 1, 1997 is invalid….**The Patient's Result in this Case further Justifies the Requester's Claim of Fair and Reasonable.**"

2. Respondent: Letter dated, 08/07/02
"…there was no recommendation of reimbursement for this review, which was for the disputed amount of $9,659.00. Please refer to the attached Explanation of Payment and Bill Review Report."

IV. FINDINGS

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 06/21/01.

2. The amount in dispute is $9,659.00 per the disputed services chart.

3. Per the EOB this is a fair and reasonable reimbursement dispute.

V. RATIONALE

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate…"

Section 413.011 (d) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier's methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

The provider has submitted EOBs from other carriers as examples of "fair and reasonable" reimbursement for same or similar services. These EOBs were paid at different percentages of the billed amount. The Provider has also provided graphs and charts to indicate the percent of payment for 208 consecutive cases billed for arthroscopic shoulder decompression. A chart was provided to indicate the range of charges and the range of payments: likewise for the shoulder debridement. The percentages range from 100% payment to 6% payment. This evidence indicates that a range of carriers have differing ideas about what is fair and reasonable. It does not provide evidence as to why the billed amount is fair and reasonable. The willingness of

some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011 (d) of the Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 30th day of August 2002.

Carolyn Ollar, RN, BA
Medical Dispute Resolution Officer
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.